

December 9, 2008

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Division of Licensing and  
Regulatory Services

Phyllis Powell, Manager  
Department of Health and Human Services  
Division of Licensing and Regulatory Services  
Certificate of Need Unit  
41 Anthony Avenue  
State House Station 11  
Augusta, ME 04333-0011

**RE: Southern Maine Medical Center/Maine Medical Center/Goodall Hospital -  
Remanded Proceedings from Law Court - Request for Subsequent Review**

Dear Phyllis:

This follows the November 4, 2008 Decision of the Maine Supreme Judicial Court (“Law Court”) in the case of York Hospital, et al. v. Department of Health & Human Services, et al., and the Law Court’s November 25 Order denying York Hospital’s Motion to Reconsider. It is our understanding that as a result of these Decisions, Justice Marden’s November 13, 2008 Order takes effect and the matter has now been “REMANDED to the Department for further proceedings consistent with the Decision of the Law Court, 2008 ME 165”.

The decision of the Law Court affirmed the lawful issuance of the Certificate of Need for the Cancer Care Center of York County but concluded that the Department had not had jurisdiction to act on the subsequent review request filed with regard to CCCYC, which was approved by Commissioner Nicholas in September of 2004, because an appeal from the issuance of the Certificate was pending at the time. Accordingly, the “further proceedings consistent” with this decision would be to act on the subsequent review request, now that the Department again has jurisdiction to do so.

In our capacity as counsel for the Southern Maine Medical Center (“SMMC”), Maine Medical Center (“MMC”), the Goodall Hospital (“Goodall”) and the Cancer Care Center of York County (“CCCYC”) we respectfully request that this remanded Subsequent Review proceeding be initiated and completed as soon as practicable. We seek to confirm the operative rules and to learn what additional information the Department needs to complete the Subsequent Review.

We interpret the Law Court’s remanded Subsequent Review proceedings to be governed by the 1998 Maine Certificate of Need Procedures Manual for Healthcare Facilities (“1998 CON Manual”), as well as applicable provisions of the Certificate of Need Act of 1978. We propose that the remanded Subsequent Review proceedings apply pertinent provisions of the 1998 CON Manual, Chapter 4, Section 2, and § 304-B of the 1978 Act to the 44 Record Documents that

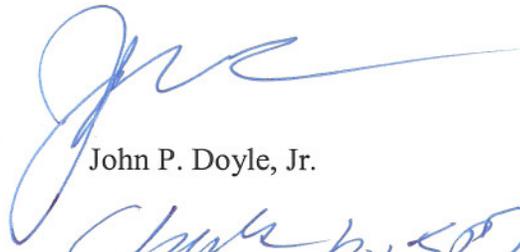
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were submitted to the Superior Court, by the attached Certificate of Record that was filed by AAG Massey (now Raquet) and dated November 12, 2004. Should the CONU take a different view as to the applicable statute, regulations, or operative record, we ask that you provide us with your position and your supporting rationale. Should the Department seek any additional information or updating of information in the Record, we request that you advise of this, as well as the proposed timeline for submission. Once the Department has the required updated information, we understand the Department will complete the review within 30 days pursuant to the 1998 CON Manual, Chapter 4, Section 2 (B)(3).

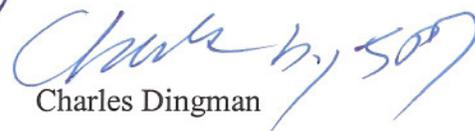
Consistent with the suggestion of AAG Raquet, we are copying counsel for York Hospital and Wentworth-Douglass Hospital on this filing and request that they advise you of their position on this matter in the near term so that this review can be completed in a timely fashion. Based on our understanding of the statute and regulations, it is our view that the Subsequent Review proceedings should properly be carried out through written submissions and supporting materials, with a decision rendered by the Commissioner based on these filings.

We will be in touch shortly with AAG Raquet to confirm your receipt of this filing and to determine the appropriate next steps.

Respectfully Submitted,



John P. Doyle, Jr.



Charles Dingman

JPD:mty

cc: Janine Raquet, AAG  
Joseph Kozak, Esq.  
Michael Seitzinger, Esq.  
Donald Quigley, Esq.  
Robert Hardison